

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR ACTION ON RULE AMENDMENTS**

Agenda # III.A.1.

Agenda Item Summary: The Board has proposed amending rules pertaining to the following:

1. Amend Department Circulars DEQ-1 and DEQ-3 to revise the requirements set forth with the newest applicable standards;
2. Amend existing rules related to the review fees associated with the proposed changes to DEQ-1;
3. Adopt existing Department policies dealing with “Certified Water Main Checklists” and “Certified Sewer Main Checklists”;
4. Adopt a requirement that an inactive project must submit a complete re-submittal after 1 year of inactive status;
5. Adopt a requirement that no plan or specification can be approved that places an existing approved system in violation;
6. Amend existing rules to clarify: the requirement for when a professional engineer is required; the use of “standard plans and specifications”; when fees must be paid; disinfection requirements; and
7. Adopt new section to allow the use of the small system compliance technologies, as described in the federal rules, for radionuclides.

List of Affected Rules: ARM 17.36.345, 17.38.101, 106, 208, and 229.

Affected Parties Summary: Owners of all public water supply and public sewage systems. Examples of these systems include cities, towns, water and sewer districts, subdivisions, mobile home parks, businesses and schools. These changes will also affect any other “person” that may modify a public water or wastewater system. Examples include engineers, contractors, water treatment installers, and well drillers.

Scope of Proposed Proceeding: The Board is considering final action on adoption of amendments to ARM 17.38.101, 106, 208 and 229 and Department Circulars DEQ-1 and DEQ-3 as proposed in the Montana Administrative Register. The Department, in the same notice, is considering final action on adoption of amendments to ARM 17.36.345 to incorporate revisions to Circulars DEQ-1 and DEQ-3.

Background: Department Circular DEQ-1 describes the construction standards to which community water systems must adhere. Department Circular DEQ-3 describes the construction standards to which noncommunity water systems must adhere. The current versions of DEQ-1 and DEQ-3 are based on the 1982 edition of “Ten State Standards”, with minor revisions in 1999. Generally accepted construction standards have evolved greatly in the last 20 years and in 2003 the Ten State Standards were updated. Included in those updates are new technologies that may solve various issues for public water supplies, but that are not currently approved by the Board.

The Department, through policy, utilizes “checklists” for water and sewer main extensions. These checklists give an existing system credit for the part of the system that has been previously approved and only require submission of basic information for the parts that are to be extended. This process greatly reduces the amount of time and money required to get these extensions approved. The Department has requested the Board to officially adopt that policy into the rules.

The Department has requested that the Board add new policies to DEQ-1 for the use of Ultra-violet (UV) disinfection and the use of non-centralized Point-of-Use (POU) and Point-of-Entry (POE) units. The use of non-centralized treatment is allowed under the Safe Drinking Water Act and Montana Public Water Supply law and rules, but there currently exists a void in detailing how and when they may be appropriate. These policies will allow systems to consider these less expensive options under the correct circumstances.

The Department has requested that the Board set a time limit for projects in an “inactive” status. Inactive status is defined as a submission that has had no real progress for 1 year after the Department sends a denial letter. Currently, a submission can sit with no progress for as long as the applicant wishes. In the mean time, standards, requirements, and even fees can change.

The Department has requested that the Board adopt a rule that would allow the Department to deny a submission because it places an existing approved system in violation. Although this seems self-evident as the very nature of the requirement for plan and specification review is to ensure that the proposed system is capable of meeting the primary drinking water regulations, a legal opinion has determined that the current rules do not allow the Department to deny an application for the sole reason that the proposed system would place an existing system in violation.

The Department has requested that the Board adopt the small system compliance technologies listed in the federal rule designed to assist small systems to meet the regulatory requirements for the radionuclides rule.

The Department has requested that the Board adopt other revisions as necessary to provide consistency and clarity in implementation and enforcement of existing rules.

Hearing Information: Katherine Orr conducted a public hearing on November 18, 2005, on behalf of the Board and the Department, on the proposed amendments. The public comments received and proposed responses are included, respectively, with the Hearing Officer Report and the draft Notice of Amendment attached to this executive summary.

Board Options: The Board may:

1. Adopt the proposed amendments as set forth in the attached Notice of Public Hearing on Proposed Amendment;
2. Adopt the proposed amendments with revisions that the Board finds are appropriate and that are consistent with the scope of the Notice of Public Hearing on Proposed Amendment and the record in this proceeding; or
3. Decide not to adopt the amendments.

DEQ Recommendation: The Department recommends that the Board adopt the proposed amendments, with the revisions shown in the attached draft Notice of Amendment.

Enclosure:

1. Notice of Public Hearing on Proposed Amendment;
2. Hearing Officer Report;
3. Draft Notice of Amendment; and
4. Draft changes to Circulars DEQ-1 and DEQ-3 in Response to Comments.